

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
ex rel. JACKIE JOE CHAMNESS)
#N-34150,)
Petitioner,)
v.) No. 05 C 4342
RICHARD S. BIRKEY,)
Respondent.)

MEMORANDUM ORDER

Jackie Joe Chamness ("Chamness") has filed a fee-paid Petition for Writ of Habeas Corpus ("Petition") under 28 U.S.C. §2254¹ to challenge his state court convictions for aggravated stalking and solicitation of murder for hire, pursuant to which he is serving an aggregate consecutive custodial term of 33 years. This memorandum order is issued *sua sponte* because the Petition itself demonstrates that Chamness has not satisfied a key precondition to obtaining Section 2254 relief.

Petition Pt. II ¶1.G, H and I and Pt. II. ¶4 reflect that Chamness' appeal from the Circuit Court of Cook County's dismissal of his post-conviction petition is still pending before the Illinois Appellate Court for the First District. That being so, Chamness has flunked the provision of Section 2254(b)(1)(A) that federal habeas corpus relief "shall not be granted unless it

¹ All further references to Title 28's provisions will simply take the form "Section--."

appears that...the applicant has exhausted the remedies available in the courts of the State." Although Chamness bases his contention of exhaustion on the fact that the Circuit Court has rejected his contention,² it remains to be seen whether the Illinois Appellate Court addresses his federal constitutional claim (as it has every right to do). Accordingly this action is dismissed, although the dismissal is without prejudice to the possible reinstatement of federal habeas proceedings if and when Chamness meets the requirement of Section 2254(b)(1)(A).



Milton I. Shadur
Milton I. Shadur
Senior United States District Judge

Date: August 8, 2005

² This Court of course expresses no view as to the substantive validity or invalidity of that contention.